

WILLIAM A. MUNDELL  
CHAIRMAN  
JIM IRVIN  
COMMISSIONER  
MARC SPITZER  
COMMISSIONER



ARIZONA CORPORATION COMMISSION



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AZ CORP COMMISSION  
DOCUMENT CONTROL

DATE: July 9, 2001  
DOCKET NO: RR-02635B-01-0374  
TO ALL PARTIES:

Enclosed please find the recommendation of Administrative Law Judge Marc E. Stern. The recommendation has been filed in the form of an Order on:

BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY  
(AT-GRADE)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by **4:00** p.m. on or before:

JULY 18, 2001

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JULY 24 AND JULY 25, 2001

For more information, you may contact Docket Control at (602)542-3477 or the Hearing Division at (602)542-4250.

Arizona Corporation Commission

**DOCKETED**

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*Brian C. McNeil*  
BRIAN C. McNEIL  
EXECUTIVE SECRETARY

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 WILLIAM A. MUNDELL  
CHAIRMAN

3 JIM IRVIN  
COMMISSIONER

4 MARC SPITZER  
COMMISSIONER

5  
6 IN THE MATTER OF THE APPLICATION OF  
7 THE CITY OF PHOENIX TO UPGRADE A  
8 CROSSING OF THE BURLINGTON NORTHERN  
AND SANTA FE RAILWAY COMPANY AT 35<sup>TH</sup>  
AVENUE, PHOENIX, ARIZONA, M.P. 188.23.

DOCKET NO. RR-02635B-01-0374

DECISION NO. \_\_\_\_\_

9 **OPINION AND ORDER**

10 DATE OF HEARING: June 12, 2001

11 PLACE OF HEARING: Phoenix, Arizona

12 PRESIDING ADMINISTRATIVE  
LAW JUDGE: Marc E. Stern

13 APPEARANCES: Mr. Divinti M. Williams, Staff Attorney, Legal  
14 Division, on behalf of the Utilities Division of the  
Arizona Corporation Commission.

15 **BY THE COMMISSION:**

16 On May 2, 2001, the City of Phoenix ("City") submitted to the Arizona Corporation  
17 Commission ("Commission") a request for an Opinion and Order for the approval of an agreement  
18 between the City and the Burlington Northern and Santa Fe Railway Company ("Railway") to  
19 upgrade the Railway's crossing at the southeast side of 35<sup>th</sup> Avenue, Phoenix, Arizona, at milepost  
20 188.23 ("Application").

21 On May 8, 2001, by Procedural Order, the Application was set for a hearing on May 24, 2001  
22 and the City was ordered to notify any interested party of the Application and the hearing.

23 At the outset of the proceeding on May 24, 2001, the witness for the Commission's Utilities  
24 Division indicated that the City had failed to provide certification of notice to the Railway and any  
25 other interested party of the proceeding by providing them with a copy of the application and the  
26 Commission's Procedural Order. Subsequently, the proceeding was continued by Procedural Order  
27 and rescheduled for hearing on June 12, 2001, with proper notice to be provided by the City.

28 On June 11, 2001, the City filed certification that notice had been provided pursuant to the

1 terms of the Procedural Order.

2 On June 12, 2001, a full public hearing was held before a duly authorized Administrative Law  
3 Judge of the Commission at its offices in Phoenix, Arizona. At the conclusion of the hearing, the  
4 matter was taken under advisement pending submission of a Recommended Opinion and Order to the  
5 Commission.

6 \* \* \* \* \*

7 Having considered the entire record herein and being fully advised in the premises, the  
8 Commission finds, concludes, and orders that:

9 **FINDINGS OF FACT**

10 1. On May 2, 2001, the City filed an Application in which it requested an Opinion and  
11 Order from the Commission with respect to an agreement between the City and the Railway for the  
12 upgrade of a crossing by widening the crossing by eight to ten feet on the southeast side of 35<sup>th</sup>  
13 Avenue at the intersection with Grand Avenue, Phoenix, Arizona, at milepost 188.23.

14 2. On May 25, 2001, the City provided notice by registered U.S. mail of the Application  
15 and hearing thereon.

16 3. A hearing was held as scheduled on June 12, 2001.

17 4. The Application provides for the City to fund the widening of the southeast side of  
18 35<sup>th</sup> Avenue at Grand Avenue and to relocate the automatic flashing light signal.

19 5. Staff testified that the cost apportionment for the installation of the crossing upgrade  
20 as provided in the Application was proper.

21 6. Staff has recommended that the Application be approved.

22 **CONCLUSIONS OF LAW**

23 1. The Commission has jurisdiction over the parties and over the subject matter of the  
24 Application pursuant to Article XV of the Arizona Constitution and A.R.S. §§ 40-336, 40-337 and  
25 40-337.01.

26 2. Notice of the Application was provided in accordance with the law.

27 3. Installation of the crossing upgrade is necessary for the public's convenience and  
28 safety.

4. The Application should be approved as recommended by Staff.

5. After the widening of the crossing, the Railway should maintain the crossing in accordance with A.A.C. R14-5-104.

**ORDER**

IT IS THEREFORE ORDERED that the City of Phoenix's Application is hereby approved.

IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company shall complete the crossing upgrade as described in the Application within fifteen months from the effective date of this Decision.

IT IS FURTHER ORDERED that the Burlington Northern and Santa Fe Railway Company shall notify the Commission, in writing, within ten days of both the commencement and the completion of the crossing upgrade, pursuant to A.A.C. R14-5-104.

IT IS FURTHER ORDERED that upon completion of the crossing upgrade, the Burlington Northern and Santa Fe Railway Company shall maintain the crossing in compliance with the A.A.C. R14-5-104.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

CHAIRMAN

COMMISSIONER

COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this \_\_\_\_ day of \_\_\_\_\_, 2001.

BRIAN C. McNEIL  
EXECUTIVE SECRETARY

DISSENT  
MES:mlj

SERVICE LIST FOR:

BURLINGTON NORTHERN AND SANTA FE  
RAILWAY COMPANY

DOCKET NO.

RR-02635B-01-0374

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